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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

Portland Division

DON'T SHOOT PORTLAND, NICHOLAS
ROBERTS, MICHELLE BELDEN,
ALEXANDRA JOHNSON,

Plaintiff,

v.

CITY OF PORTLAND and MULTNOMAH
COUNTY,

Defendants.

Civil No. 3:20-cv-00917-HZ

DECLARATION OF CAREY KAER IN
SUPPORT OF DEFENDANT
MULTNOMAH COUNTY'S RESPONSE
TO MOTION FOR PRELIMINARY
INJUNCTION

I, Carey Kaer, under penalty of perjury, declare as follows

1) I am a Deputy Sheriff with the Multnomah County Sheriff's Office. I have
personal knowledge of everything in this declaration, and I am competent to testify.

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2) I have been with the Multnomah County Sheriff's Office since 2015. I hold the rank of Lieutenant, which I earned in March, 2019. Before that time, I held the rank of Sergeant. I have been in law enforcement since 2002, when I began my career as a reserve officer with the Troutdale Police Department. I worked for the Troutdale Police Department from 2002 until 2015, with a period of time with the City of Tigard Police Department in 2003 before Troutdale Police could offer me a full time position.

3) I was a Sergeant with the Troutdale Police from 2009 until 2015 when the Sheriff's Office assumed law enforcement responsibilities for Troutdale. I am certified as a police officer by the Oregon Department of Safety, Standards, and Training ("DPSST"). I have held certifications at the advanced, supervisory, intermediate, and basic levels from DPSST. I hold an Associate's Degree from Portland Community College that I earned in 2002, a bachelor's degree from Columbia Southern University in Criminal Justice that I earned in 2012, and am currently enrolled in the Masters of Business Administration program specializing in Public Administration.

4) I am the Lieutenant in charge of the Multnomah County Sheriff's Office Rapid Response Team ("RRT"), a subunit of the Sheriff's Office responsible for crisis response, including riot and crowd control. I have been a member of the Sheriff's Office RRT since 2019, and served on East Multnomah SWAT from 2008-2010 and as unit commander since 2019. The basic function of our RRT is to manage civil disturbances. As part of my assignment, I train on topics that are relevant to RRT including applicable standards for law enforcement personnel in conducting their duties, de-escalation, supervisor training, crowd control and riot control, and proper use and application of defensive tools.

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5) The Multnomah County Sheriff's Office has written policies governing deputies using force in the performance of their duties. As part of my job as a Sheriff's Deputy, I attend regular trainings on use of force policies and procedures, on the use of various defensive tools and tactics, and on updated legal principles governing appropriate use of force in carrying out our duties. As a Lieutenant, I am also responsible for reviewing use of force reports by Deputies under my supervision to ensure deputies are using force consistent with Multnomah County Sheriff's Office policies and with the applicable legal standards under the totality of the circumstances.

6) As part of my job duties, I am trained on the use of several types of less lethal force options that are the subject of this lawsuit. This includes the 40 millimeter less lethal launcher, Rubber Ball Distraction Devices ("RBDDs"), and oleoresin capsicum ("OC"). I have trained with these options as part of crowd control and riot training with the regional task force with agencies like the Portland Police Bureau, Oregon State Police, and Salem Police Department, among other regional law enforcement agencies.

7) Additionally, other members of the RRT carry the FN303 less lethal launcher with various types of rounds, and also carry canisters of o-chlorobenzylidene malonitrile ("OC") gas. While I do not carry these items myself, members of the RRT do and must be trained on their use before they are permitted to carry them as part of their duties with the Multnomah County Sheriff's Office.

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8) I have been part of the Multnomah County Sheriff's Office presence at the Justice Center following the May 29th, 2020 incident where people broke down the doors of the building and started fires in the Records Room. The Multnomah County RRT has been on-scene regularly, along with officers from other law enforcement agencies including the Portland Police Bureau, the Port of Portland, the City of Gresham, and various other law enforcement agencies.

9) The Multnomah County Sheriff's Office's job each night since May 29th, 2020 is to protect the lives and safety of the people housed at the Justice Center, the lives and safety of the people who work there, to keep the building secure, and to keep the building operational for the courts, the jail, and police. After the May 29th, 2020 break-in and fires at the Justice Center, there were layers of fences installed in various locations at various times around the Justice Center to provide a barrier between crowds and the building.

10) During the first days of protests at and around the Justice Center, there were substantial numbers of people in the streets and surrounding park peacefully protesting. These large crowds in the early days of the protests, in late May and early June, would congregate around Chapman Park and Lownsdale Square during the early parts of the evening.

11) The vast majority of the protesters during the early portions of the evening were peaceful, and neither the Sheriff's Office nor any other law enforcement agency were taking action to disperse the crowds. During the daylight hours, law enforcement officers from PPB, from the Sheriff's Office, and from other agencies could talk with protestors without incident.

12) As the evening would draw on the situation around the Justice Center would change. Each night would be different, but I would observe a marked increase in dangerous and

threatening behavior from individuals in the crowd sometime around dark. One nightly occurrence would be projectiles being thrown over the fences in the direction of RRT members stationed on the SW 3rd Avenue portico outside the Justice Center.

13) These projectiles include, as an example, full and frozen water bottles, rocks, bricks, glass bottles, steel ball bearings, cans, and other items that can injure people. Projectiles of this type directed at officers from a distance create an immediate threat to the safety of those law enforcement officers and anyone else in the vicinity.

14) Additionally, there are fireworks almost nightly being shot off in the park and over the fences in the directions of law enforcement officers inside the fence. We would routinely have fireworks exploding on the west side of the Justice Center inside the fence or near the building.

15) More seriously, as an example, on June 7, 2020, an explosive device was thrown over the fence and exploded, injuring two of my colleagues. A video of the incident is available on the Multnomah County Sheriff's Office Facebook page, located at the following link:
<https://www.facebook.com/watch/?v=270743924129374>.

16) People would routinely try to break down portions of the security fencing or break through the fencing to get towards the Justice Center. During these times, there would often be hundreds of people nearby, in the dark, wearing masks, and the total number of people out in the park greatly exceeded the number of law enforcement in the area of the Justice Center. Given what had happened on May 29th, 2020, the removal of these barriers created a serious concern that the Multnomah County Sheriff's Office ("MCSO") and other law enforcement agencies would not be able to stop a coordinated attack by hundreds of people on the Justice Center.

17) These nightly actions – throwing of projectiles, throwing fireworks, pulling down safety fencing – created serious safety and security concerns. Portland Police Bureau (“PPB”) would, when feasible, make one or more announcements over loudspeakers to the crowd to stay back from the fence and to stop throwing projectiles over the fence, and that less lethal force options would be used against people doing so, before any force was used. MCSO RRT team members and other agencies have used force, including CS gas canisters inside the fence area and less lethal impact rounds, to stop specifically identified people or groups of people from throwing projectiles and from actively trying to break through the fence towards the Justice Center. I am not aware of any MCSO members using CS gas canisters at the Justice Center after this Court’s June 9th, 2020 Order directed at the Portland Police Bureau.

18) On June 15th, 2020, the Portland Police Bureau took down the outer fence surrounding the Justice Center, which left only the interior fence that County Facilities staff had erected. Individuals broke down and took large sections of the fence away, or piled them across the street in the park, removing all fence barriers to the Justice Center. In lieu of the fence, County Facilities staff arranged to place plywood over the exterior of the portico to protect the broken interior glass doors and restrict people’s access to the Justice Center entrance, providing another barrier to protect the people inside the Justice Center.

19) The Sheriff’s Office’s role in responding to incidents from late May until the present has largely been within the immediate area of the Justice Center to maintain the safety and security of the people inside the Justice Center. There have been occasions where Sheriff’s Office personnel have assisted Portland Police in response to calls for support in moving people

away from the Justice Center or in specific requests for backup. However, the majority of the Sheriff's Office presence has been limited to the Justice Center or the surrounding blocks.

20) While the crowds around the Justice Center each night are not as large as they were in May and early June, we continue to experience nightly instances where people in the crowds are creating life and safety risks to people inside the Justice Center. This has included people setting fires around the Justice Center, spraying flammable accelerant on the plywood sheathing outside the Justice, firing projectiles at upper floor windows at the Justice Center, blocking or sealing shut the entrances and exits at the Justice Center with debris that would hinder getting people in the Justice Center or out in the event of an emergency an example of this type of barricading of a Justice Center door is visible at the 0:10 mark of <https://www.youtube.com/watch?v=v2XWwopy2MI>) and repeated attempts to gain entry to the building at various points, including the 2nd Avenue entrances housing the Portland Police Bureau.

21) Individuals nightly are shining lasers at windows and at officers and deputies' eyes when they step out of the building, as well as at cameras to stop Justice Center personnel from viewing the crowd. People are routinely spray-painting or breaking cameras outside of the Justice Center that provide views of the crowds outside. People are approaching the building and providing cover to individuals trying to block or secure shut doors outside the building.

22) Over the past month, the coordination between the remaining people outside appears to have increased, and a higher percentage of people outside appear to be involved in violent or threatening activity as opposed to peaceful demonstrations we observed in late May and early June. Additionally, I am seeing nightly incidents away from the Justice Center that

create serious concerns about the general safety of the area around the Justice Center. There are now fires set routinely in the area surrounding the Justice Center that damage property and create risks of spreading. People are pulling debris to block roadways that can block ingress and egress from the Justice Center for first responders in the event of an emergency.

23) Over the Fourth of July weekend, the situation in the area around the Justice Center was particularly violent and threatening. Multiple fires were set over the weekend, and fireworks were consistently being aimed at the Justice Center and at law enforcement personnel in and around the facility. As individuals begin approaching the federal courthouse next door to the Justice Center, federal law enforcement personnel responding with less lethal rounds as well as CS gas canisters. Multnomah County did not use CS gas this past weekend but did assist other agencies clearing the area around the Justice Center, during which time several RRT members had commercial firework mortars explode at their feet while clearing crowds.

24) While each and every instance described above does not happen every night, it would be fair to say that the situation around the Justice Center remains uncertain and unstable during each evening. The situation is not improving, and RRT's presence at the Justice Center is still needed to maintain the safety and security of the people inside.

25) I understand this lawsuit is about uses of force by law enforcement in responding to the events I have described above. As Sheriff's Deputies responsible to protect the life and safety of the people in the Justice Center and in Multnomah County, I and other members of our team are obligated to use force consistent with our policies and with applicable legal standards, looking to the totality of the circumstances at the time force was used. Deputies have used less lethal impact rounds in specific, identifiable situations that warrant a force response under the

totality of the circumstances. I have seen no instances of Multnomah County Sheriff's Deputies using less lethal impact rounds or other less lethal defensive tools indiscriminately or in a manner inconsistent with Sheriff's Office policies.

26) As a Lieutenant, and as a Sergeant before that, I have been involved in incident review process by reviewing individual use of force and, when appropriate, making recommendations to my command staff on any necessary after action, including discipline if warranted under the totality of the circumstances. I will continue to ensure that deputies of the Multnomah County Sheriff's Office are upholding their obligations under the law and under the rules of the agency.

I HEREBY DECLARE THAT THE ABOVE STATEMENT IS TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF, AND THAT I UNDERSTAND IT IS MADE FOR USE AS EVIDENCE IN COURT AND IS SUBJECT TO PENALTY FOR PERJURY.

DATED this 6th day of July, 2020.



Carey Kaer